

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
v.)	Crim. No. 2:19-cr-00123-DBH
)	
DAMON FAGAN)	

STIPULATION AND EXHIBIT

The United States and the Defendant agree that the following excerpts from a statement provided by Maine State Police Trooper John Darcy, on April 13, 2021, at the Maine State Police Office of Professional Standards, may be considered by the Court in its decision on Defendant's Motion to Suppress. Since Counsel for Defendant did not have an opportunity to inspect Trooper Darcy's April 13 statement prior to Darcy's testimony in this matter on July 1, 2021, this Exhibit is being submitted in lieu of recalling Darcy for further cross-examination.

KEY

CS	Sergeant Carleton Small, Maine State Police, Office of Professional Standards
AL	Lieutenant Anna Love, Maine State Police, Office of Professional Standards
CP	Colonel Craig Poulin, Maine State Police, Maine State Police Trooper's Association
JD	Trooper John Darcy, Maine State Police

***** Portion of Transcript Omitted**

AL You said you're looking for traffic violations, you know, 29-A violations and whatnot which we totally all can appreciate.

What about pre-stop indicators – or like, are you making any assessments or drawing any conclusions based on observations that you're making with vehicles, and if so, what? Can you explain that to us like what you're looking at, like, we've been told that sometimes you sit at the toll and you watch vehicles come through. What are you looking for? Can you explain that to us.

JD Yeah. So, a lot of times if I do sit down in that area there's a few reasons 1) traffic moves very slow so you can see things, you can see inspection stickers, seatbelts, registrations, everything like that. Also, because it's slow, you can see the behaviors of people so sometimes you'll have a car that maybe was set up to go right by you and then last minute they, they go way out of their way to go to a different lane which is kind of unusual; because all the lanes, if you have an E-Z-Pass for instance you can go through any lane so if they might have been set-up to go right behind me and then last minute they move way to the right, that may be something.

I base a lot of things off geography. I know the state very well, I know New England very well so I know the areas where we have significant crime or drug problems, things like that. I also know geographically what's very, very far away that might be unusual to see. I work down on the southern end of the turnpike so it's not unusual to see a car from Kennebunk or Wells or York because people commute to work but sometimes, like for instance, I know that Bangor has a big, big drug problem that we're dealing with in the state so sometimes seeing a car from an area like that catches my eye just to be curious – how come that person traveled so far away specifically if the car is not in good condition, doesn't have inspection on it, it makes you wonder why would somebody travel so far when they have a car that doesn't even seem like it should be on the road, sometimes that catches your eye.

The person's behavior as far as if they're – sometimes people will just be staring at you more than, you know, the average person who just glances over. And on the contrary sometimes you have people who refuse to look at you even though you're right in a close proximity to them, so, those are just a few things that I'll see sometimes. I'd say geography is a big thing for me just because it's an interest of mine, I know New England and these cities and towns very well so, that's a big factor to me as far as, yeah, I worked in Aroostook County and I knew there was a big drug problem when I worked there and it's only gotten much worse so sometimes seeing cars from the county that's something that's very unusual – you don't see it in York very often. So, again, those things, just one thing doesn't mean that I'm going to stop that vehicle by any means but sometimes those are things that catch my eye and then I may see a violation on that car and conduct a traffic stop.

AL Yeah, I just got one follow-up before I lose it. So, how is it that you know this person or that vehicle is from Bangor? Explain that to us, walk us through, like what are you doing to determine that, how are you assessing that and making that conclusion?

JD A lot of times I'll do queries of registrations a) to see if the registration is suspended, we have a lot of vehicles that are suspended for tolls on the southern part of the turnpike just because of the toll plazas. Are they expired? And then when you do that response you'll see where the vehicle is registered out of. Can also, very quickly on our database run the registered owner as well so you can see if that person is suspended, on bail conditions, has a warrant, a protection order and you just saw two people in the car and, you know, male, female and you're wondering if, hopefully that's not the case where this person is the protected party. So, through the database I'm able to see at least where the vehicle is registered out of and where the registered owner comes back to.

AL Okay. And when you talk about a database, is our reporting database like Spillman or IMC or anything like that – are you also checking that when you're running these people?

JD Yeah, that's the database I'm referencing.

AL Okay.

JD Using Spillman to check registrations and driving status'.

AL So when you check Spillman are you able to see if people have drug contacts so you have that information as well, or?

JD Yes. You can see local returns which is our in-house history. Sometimes plates will be put in their registrations and also persons so you could run someone and see a prior drug association and whoever that Trooper's name is or if you see no access allowed. I've never seen a no access allowed that wasn't a Maine drug case so sometimes I can't see what that information is but I can see that the person has ten no access allowed and one might be as recent as a week ago.

AL So, you know based on your training and experience if it says no access allowed that it's most likely a drug contact.

JD Yes. I've never seen a no access allowed that was not a Maine drug case. Personally.

TP Just before we move on with the pre-stop indicators because I know you and I had talked about that. Is there a reason why you don't dictate those in reports anymore?

JD Yeah. The reason I don't put pre-stop indicators in a report is because although these are things you might see, the easiest way for me to explain is you can't articulate a gut instinct, something, there's times you may see a car go by you at seventy miles per hour. You don't even know what you saw. You have no idea, you just, for some reason you saw that car and you check on it, you know, hey, is his, oh, the seatbelt is not on as you get up closer to the person. And so, a) you can't articulate your gut instinct. Sometimes, b) there are so many things that you can see that may catch your eye, it doesn't mean that that person is a criminal just because you see this, it doesn't even mean that you have any reason to pull them over but, it's something that at least catches your attention because there's a lot of cars. And, let's say you have twenty cars go by you and you have that one person who everyone else glanced over at you and gave you a smile because you're in a fully marked cruiser and this one person is just staring ahead, they look really nervous, that may be an indicator that catches your eye in that moment.

But then a few weeks later you may have a car that goes by after everybody glanced and gave you a smile, this person is just staring at you and they can't seem to not look at you. That may catch your eye too. So, these pre-stop indicators, over time, when you do this for long enough and you stop enough cars you could almost contradict yourself if you testify to one day, hey, you know, what caught my eye initially? The first thing is that this person was staring at me. Then you grab a different case a month later and when you're testifying on that case you said, this person wouldn't look at me. It could be easy for somebody to try to mix up your words by saying, okay, if they're looking at you it's suspicious but if they're not looking at you it's suspicious. What is the person supposed to do? So again, so you don't, you know, you can't articulate these gut instincts sometimes. We all have levels of experience. Mine is specifically in this area. So, sometimes when a person is near me I can almost feel that they don't like my

presence there. I couldn't explain why but when I look over and maybe, if it's daylight and I could see, it may be okay, this person was just going seventy now they're going sixty even though the speed limit is seventy they won't look away, you know, they have moved to the far right lane to get away from me, they don't like my presence. And then if I see a violation on that car sometimes I'll stop that vehicle and investigate further. If there's no violation then, I move on.

AL Okay. And that was my next question. Is a pre-stop indicator enough alone to stop a vehicle?

JD No.

AL Okay. So, you may make these observations but if you don't observe a violation you can't stop the vehicle?

JD Correct, yeah. If the vehicle is following all the laws and doing nothing wrong, and even if I saw those indicators, I'll just move on at some point.

TP Do you recall any judges telling us don't do these anymore, the pre-stop indicators, don't list them in a report?

JD Yeah. I have not been personally told by the judge but I've been told second-hand that judges made comments about how – same thing I just explained with the pre-stop indicators.

CS Mm-hmm.

AL Okay. And so, to that end with pre-stop indicators, because sometimes its hard to articulate like that gut feeling or based on your observation and whatnot. If you were to list those in the reports does that also educate the defendant if you will with regards to what to make sure they don't do the next time they are in the vicinity of law enforcement or anyone, is there a consideration to that affect or, I mean, I know you guys gather a lot of information when you're doing your interviews that isn't necessarily something that's relevant to the case and [Inaudible] but, do you consider that as well when you're writing these reports?

JD Yeah. Definitely could be another thing that, yeah, for instance: you explain in there whether it's a, let's just say for example it's a geographical location that you know is having a big drug problem right now or a big crime problem, whatever it may be, and you're documenting that frequently at some point the people read our reports, it gets passed around in the jail as discovery. So, at some point people might realize okay, let's say, I'm just going to use Presque Isle as example. Presque Isle has a large drug problem, it's very far away from where I work. A lot of times when we see cars from Presque Isle we have contact they are engaged in criminal activity. If, let's say, it's somebody from Presque Isle hears about that they may not want to take a car from Presque Isle, so they may choose to borrow somebody else's car, do something different or maybe, yeah, now people are conscientious about, okay, if you see a cop glance over and just smile because that's what – I've seen the reports that the person says, you know, that's

the normal response, so absolutely, I guess I made that a long answer but yeah, I think that's another thing that they can learn certain things we're looking at just from reading that part.

AL Is there ever any consideration given to a vehicle that appears to be a rental vehicle?

JD At times, yes.

AL Okay. And what is that, can you explain that to us?

JD So, rental cars are used a lot in the commission of crimes for multiple reasons: 1) they're nice vehicles, they're always in good condition if they're from a large field company like an EAN holdings, Enterprise, things like that. They're good quality cars, they don't have any defects on them that would cause someone to get pulled over – no plate light out, no taillight out and they also can't be tied to somebody, although, the person driving the car may not have even rented it and you don't know if you see a rental car who rented it in that moment unless you have contact with the driver. And it's also, again, going back on some of this geography stuff – if the person doesn't want, if the person driving their car has warrants and bail, when you see a rental car they know that you can't figure out who they are in that moment, so, it's a good way to avoid detection as well.

JD Only one case, the case we referenced earlier with the video and the recording is the only case I've ever had that I can think of that was dismissed.

CS Okay. Right, that's be Terrel Walker?

JD Yeah. Other than that I don't see any case on here that, or I can't even think off the top of my head of a larger scale drug case I had that has been dismissed.

CS Okay.

AL And do you believe that you were racially profiling in that case that was dismissed?

JD No.

AL Why did you stop that vehicle?

JD The first thing that I saw that day, or that night rather, was that the vehicle was a rental car but it was registered out of Maine which, to me, I don't see very often, usually rental cars have out of state plates. I don't know if there's a science behind that but I don't see Maine plated rental cars very often and it came back to Bangor. I'm aware through interviews and my training, education, experience that Bangor is quite possibly the biggest drug hub in this state right now I would say. I know that first-hand from interviewing suspects who have told me, and the amount of drugs I seized that are going to Bangor have ties to Bangor. So that was the first thing I saw that caught my eye with that vehicle that I almost wonder to myself, did this person rent a car

with Maine plates because they didn't want it to look like a rental car is what I wondered. Again, I didn't know, but the majority of rental cars I see would be New York, Pennsylvania and Massachusetts, some other state except for Maine. And when I talk about rental cars I'm talking about large scale, like, Enterprise not small mom and pop rental [Inaudible].

AL Can you explain to me what a, I don't know if I'm saying this correctly, what a walled off stop is?

JD Yes. So a walled off stop would be a stop where there's prior information received typically it would be from a plain clothes drug investigator like Maine Drug Enforcement or DEA, or somebody of that nature where they're working an investigation they want to have a vehicle stopped. Most times they'll say, you know, we don't have an actual reason you'll have to find a violation. There are times they say we actually have enough based on our investigation. The trooper will stop the vehicle for that purpose to assist them in their investigation. So, they may say, you know, this person, we know they're coming back from such and such a place with a certain amount of drugs. We believe they'll be here at this time and this plate. Can you stop that car for us.

AL And they have you find a traffic violation to stop that vehicle?

JD At times they'll say, they'll make it clear to you ahead of time because we'll ask, you know, do you have probable cause, because they may have something going where they say, yeah, you can just stop that car because we have enough that we can articulate why we're doing this.

AL They know that drugs are in that car.

JD Yes. And then there's times that they don't have enough and they say you need to find your own reason to stop and you need to develop your own RAS, reasonable articulatable suspicion, but they're still giving you that car to watch for because they know from whatever investigative things happen prior that they're involved in criminal activity at that moment.

Dated: July 29, 2021

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